

CHAPTER 15: DISCIPLINE AND DISCHARGE

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1.0 DISCIPLINE - GENERALLY

1.1 POLICY

It is the policy of the Buffalo Police Department to maintain a highly disciplined work environment that induces individual employees to reach their fullest potential; that creates a sense of esprit de corps; and that gains the trust and respect of the community.

1.2 DISCIPLINE - DEFINITION

Discipline in its broadest sense means all those methods that can be used to train employees to fully comport with Department rules, regulations and procedures and which encourage employees to perform their jobs to the fullest extent of their natural talents. Discipline may be either positive or negative in nature. Positive discipline entails teaching, training and encouragement. Negative discipline involves the use of punitive measures to gain compliance.

1.3 LAW ENFORCEMENT CODE OF ETHICS

Rules, regulations and procedures generally establish the minimum level of conduct and performance that the Department can tolerate. In contrast, the Law Enforcement Code of Ethics sets the ideal standards which all members should strive to attain.

LAW ENFORCEMENT CODE OF ETHICS

As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all persons to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my Department. Whatever I see or hear of a confidential nature or that is confided in me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will

constantly strive to achieve these objectives and ideals, dedicating myself before God and to my chosen profession...law enforcement.

1.4 POLICE OFFICER'S BILL OF RIGHTS

By agreement with the PBA the Police Officer's Bill of Rights has been adopted as part of the collective bargaining agreement. It establishes guidelines to be followed by superior officers in conducting investigations arising from a member's conduct as a police officer.

A. Informing the Member

1. The member shall be informed of the rank, name, and command of the officer in charge of the investigation, as well as the rank, name and command of the interrogating officer, and all persons present during the investigation. If a member is directed to leave his/her post and report for interrogation to another command, his/her own command shall be promptly notified of his/her whereabouts.
2. The member shall be informed of the nature of the investigation before any interrogation begins, including the name of the complainant. The addresses of the complainant and/or witnesses need not be disclosed. However, the member shall be given sufficient information to reasonably apprise him/her of the allegations.
3. If it is known that the member is to be interrogated only as a witness, (s)he shall be so informed at the initial notification to appear.
4. If the member is under arrest, or is likely to be (that is, if (s)he is a suspect or the target of a criminal investigation), (s)he shall be informed of, and given, all his/her rights, pursuant to the "Miranda" decision as set forth by the Supreme Court of the United States.

B. Conduct of the Investigation

1. These guidelines shall be observed by all superior officers in conducting investigations of actions of members of the police force.
2. The interrogation of a member shall be at a reasonable hour, preferably when the member is on duty, unless the exigencies of the investigation dictate otherwise. Where practicable, interrogations should be scheduled for the daytime and the reassignment of the member to the day shift should be employed. If any time is lost, the member shall be compensated.
3. The interrogation shall take place at a location designated by the investigating Officer. Usually it will be at the command to which the investigating Officer is assigned, or at the District stationhouse within which the incident allegedly occurred.

4. The questioning shall not be overly long. Reasonable respites shall be allowed. Time shall be provided for personal necessities, meals, telephone calls, and reasonable rest periods.
5. The member shall not be subjected to offensive language, nor shall (s)he be threatened with transfer, dismissal, or other punishment. No promises or reward shall be made as an inducement to answer questions.
6. The complete interrogation shall be recorded, either mechanically or by a stenographer. There will be no "off the record" questions. All recesses called during the questioning shall be recorded.
7. If a member so requests, (s)he shall be given the opportunity to consult with counsel before being questioned concerning a serious violation of the Departmental rules, provided the interrogation would not be delayed unduly thereby. In such cases, the interrogation may not be postponed past 1000hrs of the day following the notification of the interrogation. Counsel, if available, and a representative of a line organization may be present during the interrogation.
8. Members represented by the PBA and covered by the collective bargaining agreement shall not be ordered to submit to a polygraph test.

C. Minor Violations

In cases of investigations of minor violations of Departmental rules, requests to consult with legal counsel or with a line organization representative will be denied unless sufficient reasons are advanced. In cases of minor violations, the investigating officer shall have discretion as to whether or not the interrogation shall be recorded.

D. Disciplinary Action

In any case, the refusal to answer pertinent questions may result in disciplinary action.

1.5 TIME LIMITATIONS

No disciplinary proceeding shall be commenced more than one year after the occurrence of the wrongdoing complained of or its discovery, if later. However, such limitation shall not apply where the wrongdoing complained of would, if proved in a court of appropriate jurisdiction, constitute a crime.

1.6 DISCIPLINARY PENALTIES

A permanent employee shall be subjected to departmental discipline, and termination where appropriate, as provided for in the respective collective bargaining agreements, departmental regulations, and applicable laws. A

permanent employee subjected to disciplinary charges shall be afforded all rights to a hearing process as established in the respective collective bargaining agreements, departmental regulations, and applicable laws. Sworn members are also subject to removal for a conviction for any felony, or any crime involving moral turpitude as provided in the Public Officers Law, or any other violation of law that carries a mandatory forfeiture of employment as a remedy. Examples of mandatory forfeiture include, but are not limited to, residency violations as outlined in the NYS Public Officers Law.

Disciplinary actions or measures shall consist only of the following in accordance with existing collective bargaining agreements and appropriate laws:

1. Reprimand,
2. A fine not to exceed one hundred dollars (\$100.00) to be deducted from salary or wages,
3. Suspension without pay not to exceed sixty (60) days,
4. Demotion in grade and title,
5. Dismissal from the service.

As a guideline in determining the form of discipline and/or severity of punishment, if any, the department should consider all relevant factors. Minimally, those factors should include:

1. the severity of the transgression and the extent of injury or damage to any victim;
2. the extent of damage to the professional reputation of the department;
3. the employee's past work record including any past disciplinary action and any instances of meritorious work;
4. the impact of the discipline on other members of the department;
5. the affect of the discipline in deterring the offending employee from engaging in future acts of misconduct.

1.7 SUPERVISORS/SUPERIOR OFFICER RESPONSIBILITIES

Department Rules and Regulations

Refer to Chapter VII of the Buffalo Police Department Rules and Regulations.

For Whom Supervisors/Superiors Must Initiate Disciplinary Action

1. Whenever the level of performance falls below acceptable limits, supervisors/superior officers are responsible for initiating disciplinary action if:
 - a. the employee is assigned to their command; or
 - b. the employee is temporarily assigned to their command, however briefly; or
 - c. the employee is assigned to another command but the

substandard performance occurred in the supervisor's/superior officer's presence.

2. Whenever facts come to the supervisor's/superior officer's attention that indicate that the standards of conduct of the department have been violated by an employee of another command, the supervisor/superior officer shall prepare an Inter-Departmental memorandum detailing the nature of the employee's conduct, and shall forward the memorandum through channels to IAD, with one copy being sent to the command of the employee who is alleged to have violated the Department standards of conduct.

Positive Discipline

A supervisor/superior officer can implement positive discipline by using all the means at his/her disposal to teach, train and encourage employees to become the best employees that their natural talents allow. This is a constant and continuing process that requires the supervisor/superior officer to be aware of the employee's daily performance. Positive discipline shall be used in cases in which an employee's performance is somehow deficient or it may be used when there are minor violations of Department rules, regulations and procedures..

Formal Discipline

The formal disciplinary process shall be invoked for all major violations of department standards of conduct, for cases in which a disciplinary may be an appropriate remedy, for cases involving complex investigations or when further investigation is required. The formal disciplinary process requires that IAD open a case file; that a thorough and complete investigation be undertaken; and that there be a conclusion of fact at the end of the investigation. In such cases the supervisor/superior officer shall:

1. inform the employee of the nature of the substandard performance, telling him/her that it is unacceptable, and provide remedial instruction so that conduct of a similar nature is not repeated in the future;
2. prepare a memorandum, or in the case of a complaint from a citizen, a Citizen Complaint Form, detailing the nature of the violation of Department standards of conduct;
3. Call upon IAD for assistance and guidance as to suspend the employee when required. IAD can always be contacted through the 911 Communications Lt.

E. Major vs Minor Violations

It is difficult to draw a clear line distinguishing minor violations of Department standards of conduct from major ones. Major violations will tend to seriously impair the on going operation of the unit or they may have a substantial adverse impact on the Department. Major violations include allegations of criminal conduct, moral turpitude, insubordination, misuse of

Department property or equipment, or repeated documented minor violations of Department standards of conduct. Minor violations might include slovenly appearance, coarse or harsh language, tardiness, poor service, etc. Supervisors/superior officers must use their best judgment in determining these distinctions. IAD is available for assistance as to determining major or minor violations as they case may be.

1.8 PROBATIONARY EMPLOYEES

A probationary employee is not guaranteed continued employment but merely has an expectation of appointment to a permanent position. The department has wide latitude in deciding to either retain or dismiss these employees while they are serving their probationary period.

Monitoring

During an employee's period of probation his/her performance shall be closely monitored by his/her immediate supervisor. The supervisor shall immediately correct deficiencies and shall periodically report on the probationary employee's progress to the Police Academy and other departmental units as determined by the Commissioner from time to time on the appropriate forms as the case may be.

Police Academy

The Police Academy shall be responsible for the oversight of all probationary employees. They shall prepare and disseminate forms designed to assess the progress of such employees. They shall carefully review completed progress reports and shall stay in close contact with the supervisor of any probationary employee who is exhibiting sub-standard performance levels.

Termination

Probationary employees who the Commissioner believes will not be able to raise their performance to an acceptable level may have their appointment to the position rescinded at any time prior to the expiration of the probationary period. Such probationary employee shall be given the opportunity to address the Commissioner on his/her own behalf prior to such rescission. All Departmental property, identification and equipment must be promptly returned by any employee who has had his/her appointment rescinded.

Department of Human Resources

The Commissioner's office shall promptly notify the Department of Human Resources in writing whenever a probationary employee is dropped from the rolls.

2.0 INTERNAL AFFAIRS DIVISION

2.1 POLICY

It is the policy of the Buffalo Police Department to maintain a Internal Affairs Division whose primary function is to ensure that all Department personnel achieve high standards of personal integrity, discipline and professional conduct.

2.2 I.A.D. TO REPORT DIRECTLY TO COMMISSIONER

Because of the sensitivity and potential impact of investigations involving the internal affairs of the Department, the commanding officer of IAD shall report directly to the Commissioner.

The commanding officer of IAD shall keep the Commissioner informed of the nature and progress of all on going investigations.

The commanding officer of IAD shall immediately notify the Commissioner of:

1. any credible allegation of a Department employee's commission of a crime, or any offense involving moral turpitude;
2. any incident allegedly involving misconduct by a Department employee which is likely to generate substantial public attention.

Based on the investigation of the internal affairs incident and the recommendation of IAD, the Commissioner shall determine the appropriate disposition of each such incident.

2.3 COOPERATION WITH LABOR RELATIONS DIVISION

In cases involving discrimination in the workplace based on race, color, religion, sex or national origin, or cases involving sexual harassment, or disciplinary cases in which Departmental charges are preferred, IAD shall keep the Division of Labor Relations informed and shall extend to that Division their fullest cooperation.

2.4 I.A.D. INVESTIGATIONS

IAD shall coordinate the investigation of disciplinary infractions. They may designate the offending employee's command to conduct the investigation of minor violations. The employee's command will report the results of the investigation to IAD and recommend appropriate remedial measures.

All major violations shall be investigated by IAD. Investigations that are particularly complex or that involve allegations of discrimination based on race, color, religion, sex or national origin, or that involve allegations of sexual harassment, shall be investigated by IAD.

Subject to review by the Commissioner, the Commanding Officer of IAD shall have the authority to determine which departmental unit is to conduct employee investigations.

2.5 CIVIL LAW SUITS AND CLAIMS

Refer M.O.P. Chapter 6.

2.6 AUTHORITY OF I.A.D.

In pursuit of employee investigations, the Commanding Officer of IAD is authorized to transgress District and Division boundaries and lines of authority and (s)he shall be given complete cooperation by all department employees.

2.7 CONFIDENTIAL RECORDS

The Internal Affairs Division shall maintain a record of all complaints against the Department or its employees and shall be the central repository for all such complaints. These records shall be kept confidential and shall be separate and apart from regularly maintained personnel files.

All records concerning allegations of violations of Department standards of conduct which do not result in the lodging of Department charges shall be expunged after five years. In cases in which the employee is a party to a law suit involving his/her employment with the City or the City is also a named party, IAD records shall be maintained until the law suit has been concluded or until five years have expired from the date of the complaint, whichever is later.

Records concerning violations of Department standards of conduct which result in the preferring of Department charges, shall be maintained permanently in the employee's IAD file.

2.8 ANNUAL REPORTS

The Internal Affairs Division shall annually prepare statistical summaries of the activities of the unit.

2.9 I.A.D. ASSISTANCE TO OTHER UNITS

IAD is always available for advice and assistance. The 911 Communication Lt. shall be contacted when circumstances arise outside normal business hours. The 911 Communications Lt. may contact the on-call IAD investigator for further assistance should circumstances so require.

2.10 BLATANTLY FALSE COMPLAINTS

In those instances in which there are grossly or blatantly false accusations concerning employee misconduct and there exists evidence of intentional misrepresentation or the filing of false statements, the Commanding Officer of IAD shall recommend to the Commissioner that criminal action be pursued against the complainant.

3.0 INVESTIGATING COMPLAINTS AND VIOLATIONS

3.1 POLICY

It is the policy of the Buffalo Police Department to thoroughly investigate ALL complaints, from whatever source derived, and to investigate all allegations of misconduct or infractions of department standards of conduct. Each such investigation shall result in an appropriate disposition.

3.2 WHERE COMPLAINTS MAY BE RECEIVED

Citizen complaints concerning Department employees will be accepted at ALL police facilities in which sworn members are assigned regardless of whether the employee who is the subject of the complaint is assigned to that facility. Complaints may be made in person or over a telephone or through the mail, fax, departmental website, or in some instances through a third party as the case may be.

3.3 SUBORDINATES TO NOTIFY SUPERVISOR/SUPERIOR OFFICER

Subordinates becoming aware of complaints regarding an employee of the department, in whatever manner received, shall immediately notify his/her supervisor/superior officer.

3.4 CITIZEN COMPLAINTS - SUPERVISOR/SUPERIOR OFFICER RESPONSIBILITIES

It is the responsibility of every supervisor/superior officer to personally accept citizens' complaints concerning employees of the department. In those circumstances in which the supervisor/superior officer is away from the building/office, (s)he shall be requested to return immediately.

In every case in which a citizen makes a complaint concerning an employee of the department, the complainant shall be provided with the pamphlet entitled "How the Buffalo Police Department Complaint Process Works." The complainant shall also be allowed to read and review the departmental copy of the IAD Complaint Investigation Manual located at each District.

Often a complaint may result from a lack of understanding of the law or of police procedures. Complaints of this nature in which there is no basis for an allegation of misconduct or where there is obviously no violation of department standards of conduct, shall be resolved by the supervisor/superior officer if possible. The supervisor/superior officer need not prepare a Citizen Complaint Form (P-294) if the citizen is satisfied with the resolution and there are no grounds for further investigation. If the citizen cannot be satisfied or there may be a reason for further investigation, the supervisor/superior officer shall complete and forward a Citizen Complaint Form.

In cases in which a citizen alleges conduct by a department employee and the conduct, if true, would constitute any violation of department standards of conduct, the supervisor/superior officer must complete a Citizen Complaint Form.

- A. If the alleged conduct of the employee would constitute a minor violation but it is not of a repetitive nature, the supervisor/superior officer shall attempt to resolve the complaint. If (s)he is able to successfully resolve the complaint and the citizen is satisfied with the disposition, the supervisor/superior shall note his/her actions on the

Citizen's Complaint Finding Form (P-294b).

- B. In cases alleging infractions of law, major violations of Department standards of conduct, minor violations of a repetitive nature, or other misconduct, the supervisor/superior shall complete and forward the Citizen Complaint Form to the Internal Affairs Division and no attempt shall be made to resolve the complaint at this time.
- C. In cases in which the allegations, if proven, would constitute a crime (i.e. misdemeanor or felony), the supervisor/superior officer shall also prepare an incident report.

When a Citizen Complaint Form is completed concerning conduct of an employee not of the supervisor/superior officer's command, the supervisor/superior officer shall also forward a copy of the form to the employee's command.

Citizens shall not routinely be referred to IAD concerning a complaint against a departmental employee without first having completed a Citizen Complaint Form.

3.5 HANDLING MINOR VIOLATIONS

Minor violations of Department standards of conduct which are isolated incidents and which are not the subject of a citizen complaint may be handled with positive discipline.

In cases of minor violations of Department standards of conduct which are not isolated instances, supervisor/superior officer shall:

1. Prepare a memorandum detailing the incident. Upon giving remedial instruction, the supervisor/superior officer will include in the memorandum the nature of the remedial instruction provided;
2. A copy of the memorandum shall be issued to the employee. The employee may choose to respond in writing and the employee's response will be attached to each copy of the supervisor/superior officer's memorandum.
3. The memorandum shall be forwarded to IAD through the chain of command. The memorandum shall include a suggested disposition of the case from each of the superior officers in the chain of command including the initiating supervisor/superior officer. The memorandum and the employee's response, if any, will be filed in IAD.
4. The Commanding Officer of IAD will decide whether a IAD case file will be opened and the formal disciplinary process invoked.

3.6 COMPLAINTS AGAINST SUPERIOR OFFICERS

If a subordinate employee becomes aware that a superior officer has violated department standards of conduct, the subordinate shall notify IAD either in writing or in person. This does not permit subordinate employees to initiate complaints that they know are capricious, unjustifiable and without any basis in fact.

If a citizen attempts to lodge a complaint against a superior officer:

1. The Superior Officer who is the subject of the complaint shall refer the complaint to an on-duty Supervisor of a higher rank than (s)he assigned to that command; or
2. If no Supervisor of a higher rank assigned to that command is on duty, the Duty Officer or Captain assigned as the Duty Officer should investigate the complaint; or
3. If there is no Duty Officer or Captain assigned as the Duty Officer on Duty, the complainant shall be referred to IAD.

3.7 DETERMINING WHICH COMMAND IS TO INVESTIGATE THE COMPLAINT

Upon receipt of a Citizen Complaint Form or a Department memorandum detailing allegations of substandard conduct, IAD will review the documents and determine which would be the best unit to handle the investigation. If accusations of a serious nature are alleged, IAD will investigate the case. The employee's command may be designated to investigate complaints that are minor in nature. The Commanding Officer of IAD, subject to the review of the Commissioner, shall determine which unit handles the investigation.

3.8 CONDUCTING THE INVESTIGATION

- A. When an employee investigation is assigned to the employee's command, the Chief or superior in charge of that command will be responsible for its completion. The Chief or superior in charge may delegate authority to lesser ranking superior officers of his/her command to pursue the investigation however, the ultimate responsibility for its completion rests with the Chief or superior in charge.
- B. All investigations targeting sworn members of the department must be conducted in conformance with the Police Officer's Bill of Rights. Investigations shall also be conducted as determined by the IAD Office Investigation Manual.
- C. All evidence must be thoroughly evaluated and witnesses must be carefully interviewed. Statements of witnesses shall be taken in appropriate cases.

- D. In all cases, the complainant will be contacted and apprised of the results of the investigation. This may be done in writing or telephonically. A record of such contact must be noted on form P-294b.
- E. All superior officers in the employee's chain of command will submit in writing their recommendations concerning the disposition of the case. In cases of citizen complaints this will be done on form P-294b. For non-citizen complaints the recommendations will be forwarded on an Intra-Departmental memorandum.
- F. Cases shall be resolved within thirty (30) days. If additional time is required, a request in writing must be submitted to the Commanding Officer of IAD and approved by the Commissioner.

NOTE: If an employee's command conducts the investigation, the Command Officer conducting the investigation must speak with the complainant as part of their investigation.

3.9 LINES OF AUTHORITY

The Commanding Officer of IAD shall have authority to transgress District and Division boundaries, and lines of authority. In pursuit of such investigations, (s)he shall be given complete cooperation by department employees. Chiefs and other Superior Officers should not encroach on the command of their peers except in emergency circumstances (e.g. when the police purpose or good order of the department would be jeopardized by failure to take immediate action).

When minor complaints affect more than one command, the investigation shall be conducted by one Chief or superior in charge of the command, with the active cooperation of other affected Chiefs or superior in charge of the command. Recommendations shall reflect the combined thinking of the concerned Chiefs or superior's in charge of the commands.

3.10 CONCLUSIONS OF FACT

At the completion of each formal investigation the department shall reach one of the following conclusions of fact concerning the allegations:

SUSTAINED - Sufficient evidence exists to clearly prove the allegations.

EXONERATED - The alleged facts did occur but were justified and proper.

NOT SUSTAINED - Insufficient evidence exists to clearly prove the allegations.

UNFOUNDED - The alleged facts did not occur or the accused officer was not involved.

4.0 SUSPENSIONS PRIOR TO DISCIPLINARY HEARINGS

4.1 POLICY

Whenever there is an allegation of misconduct against a Department employee, it is the policy of the Buffalo Police Department to suspend that employee from duty prior to a disciplinary hearing, consistent with existing collective bargaining agreements, if the employee's continued presence on the job will disrupt the operations of the unit to which (s)he is assigned; or it will have an adverse impact on the Department; or the alleged violation is of a serious nature.

4.2 AUTHORITY TO SUSPEND FROM DUTY

Prior to Service of Charges

All officers of the rank of lieutenant and above are authorized to immediately suspend a subordinate for violations of department standards of conduct which are deemed to be of a serious nature including appearing for duty under the influence of alcohol. Such suspensions shall be with pay pending service of departmental charges.

1. Consistent with the Department Drug Testing policy, sworn members appearing for duty under circumstances in which there exists reasonable cause to believe that they are under the influence of drugs shall be directed to submit to a "reasonable cause" drug test. They shall be relieved from duty and placed on administrative leave of absence with pay pending receipt of test results and the completion of any investigation conducted by the City. Refer to the Buffalo Police Department Drug Testing Policy.

After Service of Charges

After service of Departmental charges an employee may be suspended without pay for a period not to exceed thirty (30) days. Such suspension shall be at the direction of the Commissioner.

1. Employees represented by Local 264 may be suspended without pay after service of charges only if their continued presence on the job would represent a potential danger to persons or property or would severely interfere with operations.
2. All other employees of the Department may be suspended without pay after service of charges if their continued presence on the job would have an adverse impact on the Department.

4.3 PROCEDURE FOR SUSPENDING AN EMPLOYEE

Suspension With Pay Prior to Service of Charges - Civilian Employees

If a civilian employee is immediately suspended with pay prior to service of charges, the superior officer making the suspension shall inform the employee

that (s)he is suspended and the reason therefore.

Suspension With Pay Prior to Service of Charges - Sworn Members

Supervisors/superior officers contemplating suspending an employee prior to service of charges shall, absent exigent circumstances, first consult with IAD. If a sworn member of the Department is to be suspended prior to service of charges, the superior officer that suspends the sworn member shall:

1. inform the sworn member that (s)he is suspended and the reason therefore;
2. obtain the sworn member's badge and identification card;
3. if possible, ascertain if the sworn member has a valid pistol permit;
 - a. if no permit is presented, obtain all handguns owned by the sworn member,
 - b. if a valid permit is presented, obtain all Department issued weapons only;
4. prepare forms P10 and/or P-10a for the officer's weapons, badge and identification and deliver the property to the Property Office consistent with current directives;
5. notify IAD if IAD personnel are on duty, or notify the 911 Communications Lieutenant. when no IAD personnel are working and in such case the 911 Communications Lt. will notify the on-call IAD investigator;
6. prepare a memorandum detailing the conduct or activities for which the employee was suspended. Copies of the memorandum must be forwarded to IAD prior to the expiration of the suspending officer's tour of duty. A copy shall also be forwarded through the normal chain of command.

Suspension Without Pay After Service of Charges

Employees who are to be suspended without pay after service of charges shall first be served with the charges. The employee shall be allowed to review them and cite any inaccuracies before the suspension occurs.

4.4 RETURN OF BENEFITS IF CHARGES ARE NOT SUSTAINED

If the charges are not sustained, the accused person shall be restored to his/her position with full pay for any period of suspension less the amount of compensation for that period:

- A. which (s)he may have earned in any other occupation or employment;
- B. received from unemployment benefits

5.0 CHARGES AND HEARINGS

5.1 POLICY

When disciplinary charges are to be lodged against a Department employee, it is the policy of the Buffalo Police Department to prepare and serve the charges on the accused employee and to present evidence concerning the charges before the hearing officer designated to try the case.

5.2 PREPARING THE CHARGES

Commissioner's Determination

If after a thorough and complete employee investigation, the conclusion of fact results in a finding of "sustained," the Commissioner may direct, in his/her sole discretion, that Departmental charges be preferred against the accused employee. If the Commissioner determines that departmental charges are not to be preferred, (s)he shall direct that appropriate action be taken to insure that the employee's conduct is corrected and that the likelihood of recurrence is minimized. Any action directed by the Commissioner shall be consistent with the terms of the applicable collective bargaining agreement.

Charges and Specifications Defined

1. The charge is the designation of the specific standard of conduct which the accused is charged with violating.
2. The specification is a statement of facts which in law constitute the offense charged. Specifications should be drawn in clear and concise language and should contain the following information:
 - a. rank, name and command of the accused;
 - b. date, time and place of the alleged offense, (approximate entries will be acceptable);
 - c. if the offense was committed more than once, or in more than one way, there shall be distinct specifications;
 - d. each specification shall be complete in itself and not refer to facts or particulars of other specifications;
 - e. specifications under each charge shall be numbered consecutively.

5.3 SERVING THE CHARGES

IAD shall prepare a "Notice of Charges" which shall be attached to the charges.

IAD shall issue or cause to be issued to the accused employee, a copy of the charges and "Notice of Charges."

If the charges are issued in person to the accused employee, the employee shall acknowledge receiving the charges by signing his/her name and the date thereon.

If the charges are not issued in person to the accused employee, the officer delivering the charges shall certify in writing on the original copy, the time, date, place and manner in which the charges were delivered. If the charges cannot be personally issued to the accused employee, charges may be issued by:

1. delivering the charges personally to some person of suitable age and discretion at the accused employee's place of residence; or
2. if the place of residence cannot be located, then by personally posting the charges in a conspicuous place in the stationhouse or office to which the accused employee is assigned.

In all cases, the employee's collective bargaining agent must also be served with the charges.

5.4 ANSWER TO CHARGES

The accused employee shall have ten (10) days, exclusive of the date of service, in which to answer the charges.

The answer must be in writing and must be served on the Commissioner.

Failure to serve a written answer within the time provided shall be deemed an admission of the charges. However, where the accused defaults in answering, (s)he shall be permitted to show matters in mitigation of any punishment which may be imposed.

5.5 AMENDMENTS TO THE CHARGE

After charges have been preferred, they may be altered or amended by the Commissioner, or (s)he may cause new charges to be prepared. Slight errors in names, dates and amounts may be corrected by the Commissioner on motion.

All causes for complaints against the accused employee arising from the same incident and not covered by the original or amended charges shall be forever barred.

5.6 INFORMAL CONFERENCE

Within ten (10) days after the receipt of the written answer to the charges preferred, or if the accused employee defaults in answering, within ten (10) days after his/her time to answer has expired, the Commissioner shall conduct an informal conference upon the charges. At such conference the accused employee shall have the opportunity to be represented by his/her collective bargaining agent or by legal counsel. (S)he may, if (s)he desires, present witnesses on his/her behalf. The Commissioner shall have the power to dismiss or withdraw the charges if the conference so warrants, or accept a plea of guilty.

In all cases where the accused employee enters a plea of guilty, the Commissioner shall receive evidence showing all the circumstances of mitigation or aggravation which accompanied the offense, unless they are fully disclosed in the

specifications.

In the event that the charges are not withdrawn or dismissed after such conference or if a plea of guilty has not been entered, a formal hearing shall then be held upon the charges before a hearing officer mutually selected by the parties. Such hearing officer shall be deemed to be the person designated by the Commissioner for that purpose within the meaning Section 75 of the Civil Service Law of the State of New York. In the case of a sworn member, where the parties are unable to agree upon a hearing officer, or, where the hearing officer agreed upon is or becomes unable or to act, then the parties shall mutually apply to the Supreme Court of the State of New York for the appointment of a hearing officer.

5.7 UNIFORMS TO BE WORN

Uniformed employees of the Department shall appear at the Informal Conference and/or Formal Hearing and shall do so in uniform.

Officers assigned to Detective or plainclothes duty, Officers on long time sick and IOD status and non-uniform civilian employees, need not appear in uniform at the Informal Conference and/or Formal Hearing however, shall appear in acceptable attire as if attending court. (See M.O.P. Chapter 6)

5.8 RIGHTS OF THE ACCUSED EMPLOYEE

The accused employee is entitled to the following, as a matter of right:

A reasonable time in which to prepare for trial;

To be present at the trial;

To be heard in person and by counsel and to give and furnish evidence in his/her defense;

To reasonable adjournments in order to be able to prepare for trial;

(S)he shall not be compelled in advance of the trial to disclose the names of any of his/her proposed witnesses;

Upon application, the Commissioner shall issue blank subpoenas in which the accused or his/her attorney may insert the name of any person (s)he desires to attend and give evidence.

The burden of proving the charges shall rest with the Department.

5.9 SUBPOENAS

The Commissioner shall have the power to administer oaths and issue subpoenas. In case any witness shall refuse to appear or answer any proper question, (s)he may be ordered to do so by a justice of any court of record, and punished for

his/her disobedience of any such order in accordance with law.

The impartial hearing officer selected to conduct the formal hearing shall be vested with all the powers of the Commissioner in conducting the hearing.

5.10 ADJOURNMENT: ABSENCE OF WITNESSES

Upon application by the accused for adjournment of the formal hearing because of the absence of a witness for the accused, it should distinctly appear upon his/her oath that:

The witness is material, and why;

The accused employee has used due diligence to require the attendance of the witness;

The accused has reasonable grounds to believe that (s)he will be able to procure such attendance within a reasonable time. If the absence of a witness is caused by sickness, the accused employee must produce a certificate from the attending physician to that effect.

5.11 RECORDING THE FORMAL HEARING

All formal hearings must be recorded.

If the accused employee is found guilty, a copy of the charges, his/her written answer, a transcript of the hearing, and the final determination itself shall be placed in the employee's personnel file. A copy thereof shall also be filed with the Municipal Civil Service Commission.

A copy of the transcript of the hearing shall, upon the request of an accused employee who has been found guilty, be furnished without charge.

5.12 RULES OF EVIDENCE

Compliance with the technical rules of evidence during a formal disciplinary hearing is not required.

5.13 REVIEW OF THE HEARING OFFICER'S DECISION

After the formal hearing, the impartial hearing officer shall make findings and recommendations which shall be referred to the Commissioner for review and decision. The judgment of the Commissioner will be set forth as an order or resolution and will become part of the record of the case.

If the PBA disagrees with the decision of the Commissioner of Police to change the decision recommended by the Hearing Officer concerning a sworn member of the Department, the PBA may seek review of such change in decision. The parties, through the American Arbitration Association and within seven days of the Commissioner's decision, shall mutually select an arbitrator to review the

case. It is understood that such arbitrator shall not be authorized to conduct a rehearing of the matter, but only to review the record of the proceeding to determine whether the change in decision by the Commissioner was supported by substantial evidence in the record. If the arbitrator so determines, (s)he shall have the authority to award an appropriate remedy which shall be final and binding upon the parties and the sworn member involved. It is further understood that the cost of such arbitration shall be shared equally between the parties.

Any employee believing himself/herself aggrieved by a penalty or punishment of demotion in or dismissal from the service, or suspension without pay, or a fine imposed pursuant to the provisions of the collective bargaining agreement, may appeal from such determination either by an application to the Buffalo Municipal Civil Service Commission or by an application to the Supreme Court in accordance with the provisions of Article 78 of the Civil Practice Laws and Rules. If such person elects to appeal to the Commission, (s)he shall file such appeal, in writing within twenty (20) days after receiving written notice of the determination to be reviewed. In accordance with the provisions of Subdivision 76 of the Civil Service Law, the decision of the Commission shall be final and conclusive and not subject to further review in court.

5.14 TERMINATION CONFERENCE

If an employee's dismissal results from disciplinary action or for violation of the Department's Drug Testing Policy, a termination conference shall be held. At this conference the employee facing dismissal shall be:

Informed of the reason for the dismissal;

Informed of the effective date of the dismissal;

Informed of the status of fringe benefits and retirement benefits;

Informed of the contents of his/her personnel file as it relates to the cause of dismissal;

Required to return all Department property and equipment.

5.15 SEEKING INTERCESSION ON BEHALF OF THE ACCUSED

Employees against whom charges have been preferred, shall not in any manner, or at any time, cause any person to intercede for them, personally or otherwise.

5.16 AFFECT OF A FINDING OF GUILT LIMITED TO TWO YEARS

After a lapse of two (2) years, a determination that an accused employee was guilty of the charges preferred against him/her shall not be considered upon application for promotion made by him/her, nor shall it affect any right or privilege to which (s)he would otherwise be entitled were it not for such determination. A lapse of two years shall be deemed to have occurred two years

from the date that the Department accepts a plea of guilty to the charges, or two years after the Commissioner receives the findings and recommendations of the hearing officer.

5.17 RESIGNATIONS, SEPARATION FOR CAUSE

The Commissioner shall caused to be placed in the personnel file of any employee resigning or separating from the Department for cause, all the facts pertinent to the action.

6.0 PREVENTING DISCRIMINATION IN THE WORKPLACE

6.1 POLICY

It is the policy of the Buffalo Police Department to treat all employees fairly and to seek out and prevent discrimination to or by its employees that is based upon race, color, religion, sex or national origin.

6.2 COMPLAINT PROCEDURE

Department employees who feel aggrieved because of discrimination that is based upon race, color, religion, sex or national origin, which occurs in the work place, may make their concerns known by any of the following means.

Aggrieved employees who feel comfortable doing so may directly inform the person engaging in the discriminatory conduct that the conduct is discriminatory and that it must stop.

Aggrieved employees who do not wish to communicate directly with the person engaged in the discriminatory conduct, or if direct communication with the offending party has proved unavailing, may contact either their own immediate supervisor or the offending party's immediate supervisor. The supervisor shall immediately prepare a memorandum detailing the allegations of the subordinate and have such report delivered to IAD prior to the start of the next business day. Copies of the memorandum shall be forwarded through the chain of command to the offending party's District/Division Chief or Commanding Officer. Minimally the report shall include:

1. the date of receipt of the complaint;
2. identification of the complainant;
3. identification of the party or parties and the action complained of, including all relevant background facts and circumstances;
4. a statement detailing the scope of the preliminary investigation that had been undertaken and the results thereof;
5. a statement of corrective measures pursued, the dates such measures were undertaken and the results achieved.

Aggrieved employees who do not wish to communicate directly with the person engaged in the discriminatory conduct and who do not chose to contact their own

immediate supervisor or the offending party's immediate supervisor, may as an alternative, directly contact the Labor Relations Division.

Aggrieved employees who do not choose to directly confront the person engaging in the discriminatory conduct, or who do not choose to contact their own immediate supervisor or the offending party's immediate supervisor, or contact the Labor Relations Division, may prepare a memorandum detailing their allegations and forward the memorandum directly to IAD.

Aggrieved employees alleging discriminatory conduct by anyone with supervisory authority, or the failure by supervision to take immediate action on the employee's complaint, may also file a formal grievance in accord with the provisions of the appropriate collective bargaining agreement grievance procedure.

6.3 TIMELINESS FOR INITIATING COMPLAINTS OR GRIEVANCES

There are no express time limits for initiating complaints under this policy, however, every effort should be made to file such complaints as soon as possible, while facts and potential testimony of witnesses, if any, are still fresh.

Employee grievance procedures under collective bargaining agreements have time limits. If the employee submits a grievance alleging discrimination based upon race, color, religion, sex or national origin and the grievance procedure outlined in the appropriate collective bargaining agreement is invoked, time limits must be observed.

Complaints to the Equal Employment Opportunity Commission must be filed within one hundred eighty (180) days.

6.4 INTERNAL AFFAIRS DIVISION AS CENTRAL REPOSITORY

IAD shall be the unit for channeling and recording all complaints against Department employees involving allegations of discrimination based upon race, color, religion, sex or national origin. IAD shall be responsible for insuring that all complaints are dealt with fairly, effectively, and in accord with Department policies and procedures.

Upon receipt of such a complaint, IAD shall immediately notify the Division of Labor Relations. IAD shall fully cooperate with the Division of Labor Relations in handling complaints of this nature.

IAD shall maintain such records, establish such systems, and adopt such procedures that are necessary to handle complaints involving allegations of discrimination in the workplace that are based on race, color, religion, sex or national origin.

If the Commissioner determines that a complaint would best be processed under the grievance procedures outlined in the respective collective bargaining

agreements, (s)he shall refer the complaint to the appropriate collective bargaining agent.

6.5 INVESTIGATION

All complaints alleging discrimination in the workplace that are based upon race, color, religion, sex, or national origin shall be thoroughly and completely investigated by IAD. IAD shall interview all witnesses, Department personnel, persons named in the complaint, and any other person who may have pertinent information. All relevant evidence shall be carefully examined. At the completion of the investigation, IAD shall report their findings and make appropriate recommendations to the Commissioner. Cases shall be resolved within thirty (30) days, with extensions granted by the Commissioner based upon good cause.

The Commanding Officer of IAD shall keep the Commissioner informed at all times of the progress of the investigation.

The Commanding Officer of IAD shall have authority to transgress District and Division boundaries and lines of authority. In pursuit of such investigations (s)he shall be given complete cooperation by Department employees.

6.6 COMMISSIONER'S DETERMINATION

The Commissioner shall make a determination as to the validity of the complaint, based upon the report of IAD. If the Commissioner determines that the complaint may be valid, (s)he shall determine the best course of action.

The Commissioner's choices include, but are not limited to, preferring charges against employees violating Department standards of conduct; amending rules, regulations, policies and procedures; or referring the complainant to the grievance process outlined in the appropriate collective bargaining agreement if the time limits for filing the grievance have not yet expired. In every case, the complaining employee shall be provided with the written determination of the Commissioner.

6.7 RESPONSIBILITY OF SUPERVISORS/SUPERIOR OFFICERS

It is the responsibility of supervisors/superior officers to prevent, report and uncover instances in the workplace in which discrimination based on race, color, religion, sex or national origin occurs. They shall take prompt remedial measures commensurate with the level of authority vested in their rank and position. Such remedial measures shall be consistent with current directives and shall not breach the applicable collective bargaining agreement.

7.0 PREVENTING SEXUAL HARASSMENT IN THE WORKPLACE

7.1 POLICY

It is the policy of the City of Buffalo (hereafter "City") and the Buffalo Police Department to provide a business and employment environment free of unwelcome sexual advances, requests for sexual favors and other verbal or

physical conduct or communications, which have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment constituting sexual harassment as defined and otherwise prohibited by state and federal statutes.

7.2 DEFINITION OF SEXUAL HARASSMENT

The U.S. Equal Employment Opportunity Commission (EEOC) has issued guidelines interpreting Section 703 of Title VII as prohibiting sexual harassment (29 CFR 1604.11). Sexual harassment is defined in these guidelines as follows:

...Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Further, New York State Human Rights Law prohibits discrimination on the same basis as covered by Title VII, including sexual harassment.

7.3 CONDUCT CONSTITUTING SEXUAL HARASSMENT

An employee's engaging in sexual harassment in the workplace brings discredit to the Department as well as the offending employee and it is prejudicial to the Department's good order, discipline and reputation. Sexual harassment is prohibited and employees shall not:

1. Make sexual advances or request sexual favors when submission to, or rejection of, such advances or requests is the basis for either implicitly or explicitly recommending, imposing, granting, withholding or refusing terms and conditions that either favor or adversely affect the employment of the employee or individual;
2. Recommend, impose, grant, withhold or refuse to take any personnel or other action consistent with the offending employee's duties and responsibilities because of sexual favors or as a reprisal against an employee or other individual who has rejected or reported sexual advances;
3. Disregard and fail to investigate allegations of sexual harassment whether reported by the employee or individual who is the subject of the alleged harassment or a witness, and fail to take immediate corrective action in the event misconduct has occurred.

Employees shall not abuse any other person through conduct or communication of

a sexual nature and constituting sexual harassment as defined in section M.O.P. Chapter 15 above. Whenever such conduct exists, prompt and corrective action is required.

Whenever there is reason to believe disciplinary action is warranted, the supervisor or other responsible individual is required to take prompt and corrective action commensurate with the authority vested in his/her rank and position. Such remedial action shall be consistent with Department directives and shall not breach the applicable collective bargaining agreement.

The violation of this policy can result in discipline and discharge for employees pursuant to Section 75 of the Civil Service Law and the discipline clause of the appropriate collective bargaining agreement, if applicable; and such penalties, sanctions and impositions against other individuals or parties as may be available to the City, given the nature of the contractual or business relationship that may be established with such parties or individuals.

7.4 COMPLAINT PROCEDURE

Department employees who feel aggrieved because of sexual harassment may make their concerns known by any of the following means.

Aggrieved employees who feel comfortable doing so may directly inform the person engaging in sexual harassment conduct or communications that the conduct is offensive and that it must stop.

Aggrieved employees who do not wish to communicate directly with the person whose conduct or communication is offensive, or if direct communication with the offending party has proved unavailing, may contact either their own immediate supervisor or the offending party's immediate supervisor. The supervisor shall immediately prepare a memorandum detailing the allegations of the subordinate and have such report delivered to IAD prior to the start of the next business day. Copies of the memorandum shall be forwarded through the chain of command to the offending party's District/Division Chief or Commanding Officer. Minimally the report shall include:

1. the date of receipt of the complaint;
2. identification of the complainant;
3. identification of the party or parties and the action complained of, including all relevant background facts and circumstances;
4. a statement detailing the scope of the preliminary investigation that had been undertaken and the results thereof;
5. a statement of corrective measures pursued, the dates such measures were undertaken and the results achieved.

Aggrieved employees who do not wish to communicate directly with the person engaged in the sexual harassment conduct or communications and who do not

chose to contact their immediate supervisor or the offending party's immediate supervisor, may as an alternative directly contact the Labor Relations Division.

Aggrieved employees who do not choose to directly confront the person engaging in the discriminatory conduct, or who do not choose to contact their immediate supervisor or the offending party's immediate supervisor, or contact the Labor Relations Division, may prepare a memorandum detailing their allegations and forward the memorandum directly to IAD.

Aggrieved employees alleging sexual harassment by anyone with supervisory authority, or the failure by supervision to take immediate action on the employee's complaint, may also file a formal grievance in accord with the provisions of the appropriate collective bargaining agreement grievance procedure.

7.5 TIMELINESS FOR INITIATING COMPLAINTS OR GRIEVANCES

There are no express time limits for initiating complaints alleging sexual harassment however; every effort should be made to file such complaints as soon as possible, while facts and potential testimony of witnesses, if any, are still fresh.

Employee grievance procedures under collective bargaining agreements have time limits. If the employee submits a grievance alleging sexual harassment in the workplace and the grievance procedure outlined in the appropriate collective bargaining agreement is invoked, time limits must be observed.

Complaints to the Equal Employment Opportunity Commission must be filed within one hundred eighty (180) days.

7.6 INTERNAL AFFAIRS DIVISION AS CENTRAL REPOSITORY

IAD shall be the unit for channeling and recording all complaints against Department employees alleging sexual harassment in the workplace. IAD shall be responsible for insuring that all complaints are dealt with fairly, effectively, and in accord with Department policies and procedures.

Upon receipt of such a complaint, IAD shall immediately notify the Division of Labor Relations. IAD shall fully cooperate with the Division of Labor Relations in handling complaints of this nature.

IAD shall maintain such records, establish such systems, and adopt such procedures that are necessary to handle complaints involving sexual harassment in the workplace.

7.7 INVESTIGATION

IAD shall conduct a thorough and complete investigation of all complaints alleging sexual harassment in the workplace. IAD shall interview all witnesses, Department personnel, persons named in the complaint, and any other person who may have pertinent information. All relevant evidence shall be carefully

examined. At the completion of the investigation, IAD shall report their findings and make appropriate recommendations to the Commissioner. Cases shall be resolved within thirty (30) days, with extensions granted by the Commissioner for good cause.

The Commanding Officer of IAD shall keep the Commissioner informed at all times of the progress of the investigation.

The Commanding Officer of IAD shall have authority to transgress District and Division boundaries, and lines of authority. In pursuit of such investigations (s)he shall be given complete cooperation by Department employees.

7.8 COMMISSIONER'S DETERMINATION

The Commissioner shall make a determination as to the validity of the complaint, based upon the report of IAD. If the Commissioner determines that the complaint may be valid, (s)he shall determine the best course of action. The Commissioner's choices include, but are not limited to, preferring charges against employees violating Department standards of conduct; amending rules, regulations, policies and procedures; or referring the complainant to the grievance process outlined in the appropriate collective bargaining agreement if the time limits for filing the grievance have not yet expired. In every case, the complaining employee shall be provided with the written determination of the Commissioner.

7.9 RESPONSIBILITY OF SUPERVISORS/SUPERIOR OFFICERS

It is the responsibility of supervisors/superior officers to prevent, report and uncover instances in the workplace involving sexual harassment. They shall take prompt remedial measures commensurate with the level of authority vested in their rank and position. Such remedial measures shall be consistent with current directives and shall not breach the applicable collective bargaining agreement.

7.10 CONSISTENCY WITH CITY OF BUFFALO SEXUAL HARASSMENT POLICY

Nothing in the Police Department's Sexual Harassment Policy shall be construed to be inconsistent with the principles outlined in the City of Buffalo Sexual Harassment Policy. The Police Department's policy adapts the City policy to the needs peculiar to the Police Department.

BUFFALO POLICE DEPARTMENT
PROFESSIONAL STANDARDS DIVISION



COMPLAINT INVESTIGATION
MANUAL

Anthony M. Masiello
Mayor of Buffalo

Rocco J. Diina
Commissioner of Police

BUFFALO POLICE DEPARTMENT
PROFESSIONAL STANDARDS OFFICE MANUAL

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Introduction

Acknowledgments

This manual memorializes the policies, practices, and procedures of the Professional Standards Division, hereinafter "PSD", as they relate to PSD complaint intake, investigations, and adjudication of disciplinary cases. It serves as a resource tool for the PSD investigator/member, and any potential new PSD members, so they may have some direction and information on the policies and practices of PSD. It also acts as a tool for all BPD members so they may better understand how PSD functions in our department. Finally, it serves as a resource for the public, so that they may better understand the processes involved in PSD work. The primary resources used in developing this manual include the current rules and regulations of the BPD, the Memorandum of Agreement between the United States Department of Justice and the Buffalo Police Department, the current unwritten policies and practices of PSD, credibility guidelines used in the court system, and police resource books such as Law Enforcement Administrative Investigations, by Lou Reiter, and The Rights of Law Enforcement Officers, by Will Aitchison. Special acknowledgments to Martin S. Floss, Ph. D. and James W. Grable, Jr. Esq. without whose help and guidance this manual could not have been completed. This manual is not meant to be an all-encompassing document, but rather a resource for better understanding PSD work.

*--Patrick G. Stafford, Inspector
Author*

Policy

It is the policy of the Buffalo Police Department to maintain a Professional Standards Division whose primary function is to ensure that all BPD members achieve high standards of personal integrity, discipline, and professional conduct. Because of the sensitivity and potential impact of investigations involving the internal affairs of the BPD, the commanding officer of PSD shall report directly to the Commissioner of Police. The commanding officer of PSD shall keep the Commissioner informed of the nature and progress of all on going investigations. In pursuit of member investigations, the commanding officer of PSD, or his or her designee, are authorized to transgress District and Division boundaries and lines of authority, and shall be afforded complete cooperation by all BPD members.

Reporting of Misconduct

Misconduct, for purposes of this manual, is defined as the commission of a criminal act, neglect of duty, incompetence, violation of a BPD policy, procedure, rule, or regulation, or conduct which tends to discredit the member or the BPD.

All BPD supervisors and superiors have an affirmative duty to report BPD member misconduct as defined herein.

All BPD members have an affirmative duty to report acts they observe amounting to criminal conduct by another BPD member, to their supervisor or superior as soon as possible after the observance of said criminal conduct. Also, as allowed under current rules, regulations, and collective bargaining agreements, all BPD members have an affirmative duty to report all BPD member misconduct as defined herein to their supervisor or superior.

Failure to Report Misconduct

It is the policy of the BPD to discipline members for failing to report BPD member misconduct as required by law, department rule, regulation, or other written order or policy, and as allowed under the current collective bargaining agreements.

Police Officer's Bill of Rights

The Police Officer's Bill of Rights has been adopted as part of the collective bargaining agreement. It establishes guidelines to be followed by superior officers in conducting investigations, as well as less formal types of inquiries, arising from a member's conduct as a police officer.

The member shall be informed of the rank, name, and command of the officer in charge of the investigation, as well as the rank, name and command of the interrogating officer, and all persons present during the investigation. If a member is directed to leave his or her post and report for interrogation to another command, his or her own command shall be promptly notified of his or her whereabouts.

The member shall be informed of the nature of the investigation before any interrogation begins, including the name of the complainant, if known. The addresses of the complainant and/or witnesses need not be disclosed. However, the member shall be given sufficient information to reasonably apprise him or her of the allegations.

If it is known that the member is to be interrogated only as a witness, he or she shall be so informed at the initial notification to appear.

If the member is under arrest, or is likely to be (that is, if he or she is a suspect or the target of a criminal investigation), he or she shall be informed of, and given, all his or her rights, pursuant to current legal standards and court cases, e. g., "Miranda Rights".

Chapter One

The Complaint Process

Introduction

The complaint process is critical to the BPD. As such, it must be as foolproof as possible. Failing to adequately address complaints, or making the complaint process difficult for complainants to complete, only erodes the confidence of the public in the ability of the BPD to manage the PSD function. This has the potential to degrade the professional reputation of PSD, the BPD, and the integrity of the law enforcement process in general. Members must be accountable for their actions. This is essential to the effectiveness and morale of the BPD as a whole.

I. Defining Complaints

A BPD-PSD Complaint is:

An allegation from any source of circumstance(s) amounting to a specific act or omission, which if proven true, would amount to member incompetence, misconduct, (e.g. commission of a criminal act, neglect of duty, violation of a BPD policy, procedure, rule, or regulation, or conduct which tends to reflect unfavorably upon the member or the BPD), or an expression of dissatisfaction from an external source with a policy, procedure, practice, philosophy, service level or legal standard of the Buffalo Police Department.

The most typical sources of complaints are from:

- Individual aggrieved person, often an arrestee;
- Third party person somehow interested in the underlying incident, such as a parent, relative, or a witness to an arrest or other police action;
- Other government agency or court proceeding, such as the member being arrested;
- Anonymous person(s);
- News Media or
- Notice of civil suit, such as a notice of claim.

II. Complaint Writing and Intake

How to Initiate a Complaint

A complaint may be initiated in person, over the telephone, by written correspondence, over the Department's website, or by fax. All BPD members are required to provide information to complainants on how a complaint can be filed, and also to assist the complainant in the filing of a complaint when requested to do so. The complainant shall be provided with the pamphlet entitled "How The Buffalo Police Department Complaint Process Works." Also, all BPD members are required by departmental regulation to provide their name, badge number, and employee number to anyone who requests it. Complainants are encouraged, but not required, to prepare an official BPD complaint form, P-294, to initiate a complaint. P-294 forms are available at any police district. All members assigned to districts are required to forward a completed P-294 form to PSD within three working days upon the initiation of the complaint.

No complainant is required to establish his or her identity in order to file a complaint. While providing an identity will assist PSD in its investigation, particularly for future follow-up communications, it is not required. The complaint intake supervisor or superior, or the PSD intake officer, as appropriate, shall explain the value of independent, identifying, and corroborating evidence and shall ask for this evidence from all complainants, including anonymous complainants, at the initial contact with the complainant.

It is the policy of the BPD not to close an investigation simply because the complainant withdraws the complaint, is unavailable, is unable to make a statement, or has disposed of the accompanying criminal charges when the complaint arises from an arrest. While the cooperation of the complainant is important, and may have an important impact on the successful outcome of an investigation, it is not mandatory. PSD will investigate complaints to the extent the information collected allows PSD to determine if the complaint can be corroborated.

No complainant is required to make an appointment or go to a police station, any police building, or PSD office to provide a statement. If complainants or witnesses are uncomfortable or unavailable to be interviewed at PSD offices during business hours, PSD investigators may interview them at reasonable alternate sites and times, such as a residence or place of business, and during reasonable weekend or after business hours.

Complaint Report Writing

It is the responsibility of every on-duty supervisor or superior officer to accept all complaints concerning members of the BPD as they are received. In those circumstances in which the on-duty supervisor or superior officer is away from the building or office, he or she shall be requested to return immediately, or as soon as is practical. The standard complaint form (two-page) is form P-294. Page one is used to capture the basic

information regarding the complaint, while page two is for the narrative portion of the complaint, including the nature of the allegation, complainant observations, witness observations, and any other data important to the proper investigation and resolution of the complaint. The supervisor or superior on duty at the initial contact generally prepares P-294 with the complainant, but it can be completed by other supervisors or superiors, and also by any sworn member of the PSD staff. Additional forms involving complaints include form P-294B. This is a one-page report, which is utilized to provide the supervisors or superiors of the subject(s) or target(s) of the complaint an opportunity to document their particular findings and recommendations with regards to the complaint. Supervisors or superiors may also prepare form P-73 (BPD Intra-departmental correspondence form), to provide PSD with information pertaining to a complaint.

Citizen dissatisfaction often results from a lack of understanding of the law, police procedures, or of the methods used by PSD during their investigations. The supervisor or superior shall attempt to resolve issues of this nature in which it is obvious there is no basis for a PSD complaint. In these particular instances, the supervisor or superior officer need not prepare a form P-294 if the complainant is satisfied with the resolution and there are no grounds for further investigation. If the complainant cannot be satisfied or there may be a reason for further investigation, the supervisor or superior officer shall complete and forward a form P-294 to PSD.

NOTE: Excessive force complaints, for purposes of this manual, are defined as, "all complaints alleging improper use of CAP spray or the improper use of physical force where fists, kicks, or weapons are used or where the improper use of physical force results in apparent or evident physical injury or visible physical trauma".

PSD will investigate all complaints alleging acts of excessive force, including those received from notification of pending civil suits. It is the policy of the BPD not to permit any BPD member to attempt to settle or resolve a PSD complaint involving the use of "excessive force" through any means other than the PSD investigation. This does not, however, limit the authority of the Corporation Counsel, or a member's private attorney, to settle legal claims at his or her discretion.

Assignment of Complaints

PSD is specifically designated to be responsible for oversight of all complaints involving BPD members. As such, upon receipt of a P-294, P-73, or other source of complaint, PSD will review the documents and other information available. The commanding officer of PSD, subject to the review of the Commissioner, will determine which unit will handle the investigation. PSD investigates all cases involving accusations of excessive force, with the exception of officer involved shootings, which are initially investigated by the Major Crimes Unit and subsequently investigated by PSD, and all other cases of a similar nature. PSD may also call upon a particular command or unit to make an initial "preliminary" investigation, and may also call upon the command to fully investigate a matter, or for assistance to PSD when necessary. PSD staff is available for consultation by any supervisor or superior assigned to investigate a complaint. Cases

investigated by PSD are customarily assigned to a particular staff member by the commanding officer of PSD.

Potential Criminal Complaints

When PSD has determined there is a substantial possibility that criminal charges may be filed arising from the circumstances of the complaint, PSD will consult with the appropriate prosecuting agency, often the Erie County District Attorney, or the local office of the United States Attorney, so they may have an opportunity to decide if they will pursue a criminal prosecution. During this period of time, PSD may delay moving forward with the administrative complaint until such time as the prosecuting agency declines to prosecute, or moves forward and brings a criminal complaint against the BPD member.

Chapter Two

The Investigation Process

Ensuring the integrity, fairness, and effectiveness of the complaint intake and adjudication process is the essential function of PSD. As such, PSD members are responsible for seeking out and gathering all available facts about a case. PSD members must keep an open mind and remain objective about their work. Drawing conclusions is not a primary objective of the PSD member's job. The primary role is to gather information and facts as they are reported, in an objective manner, and to assist the Commissioner and his staff in formulating conclusions based on the information and facts presented.

PSD members need to keep abreast of the most current trends and techniques in the types of administrative investigations. As such, it is recommended that each PSD member should receive formal instruction and training in administrative investigation techniques and related topics on a regular and continuing basis while assigned to PSD.

I. The Initial "Preliminary" Investigation

How the PSD Investigation Begins

During the first step of the investigation, the PSD member evaluates the complaint to determine what the specific allegations are. Then he or she determines how the complaint should be categorized, in PSD terminology, and what other possible PSD issues are involved, such as the substantial possibility of criminal charges. He or she then determines if "spin-off" type complaints, where there may be separate and different complaints about another members' actions based on the original complaint, are identified.

PSD members, together with consultation from the commanding officer of PSD, consider what initial strategies and questions should be posed to the targets, and witnesses. They also determine what documents, reports, or other evidence would be helpful. When appropriate, especially when the evidence otherwise available is insufficient to conduct a complete investigation of the complaint, PSD shall canvass the scene of an incident for evidence and witnesses as soon as possible after receiving and reviewing a complaint. Locating evidence and witnesses is essential to quality investigations.

Supervisor or Superior Requirements

During any PSD investigation, where BPD supervisors or superiors were present at the location of the alleged incident, or at the scene, at the time of occurrence, they are required to submit a P-73 written account of their knowledge of the incident, including, at a minimum, a detailed account of any matters they personally handled during and after the

alleged incident, their observations of the complainant, accused members, and physical surroundings, as well as any actions taken by them in regards to the alleged incident.

Internally Generated Complaints

The most frequent ways in which PSD receives a complaint from an internal (inside the BPD, or a closely-related government agency) source is through a P-73, P-294, or other written correspondence, such as a letter or notice. These reports generally come from a supervisor or superior, or a person in authority at another governmental agency. Examples of closely-related government agencies include the DA's office, PVB, Dog Pound, BMHA, Corporation Counsel, etc.

In each of these circumstances involving an internally generated complaint, the investigation begins in the same manner. After a review of the information and evidence provided, and often an initial contact by telephone or in person with the complainant, the PSD member makes an assessment of what additional evidence or materials are needed to conduct a preliminary investigation of the case. Written requests, referred to as "buck slip requests", are customarily sent to BPD members, sometimes as targets, and sometimes as witnesses, in which they are often asked to provide a P-73 in response to questions or issues posed to them by the PSD member. The supervisors or superiors of these members are also often asked for a P-73, or for other documentary materials relating to the complaint. Whenever a supervisor or superior are physically present during the incident being investigated, a detailed P-73 is mandatory. It shall describe in detail the supervisor or superiors' handling of any matters during and after the incident, their personal observations of the complainant and the BPD members present at the time, and any action they took at that time in regards to the incident. After receipt of these materials, and a review of the case by the PSD member and the PSD commanding officer, a decision is made on how the investigation will proceed. In certain cases and circumstances, the PSD commanding officer, after consultation with the PSD investigating member, may direct the investigation to proceed directly to questioning and sworn statements of targets and witnesses, without first requesting "buck slip requests", P-73's, etc.

Externally Generated Complaints

The most frequent manner in which PSD receives a complaint from an external (outside the PBD) source is through a complainant interview. Complainants come from a wide variety of circumstances in which they encountered a contact with the police. Sometimes the complainant has been arrested, or issued a traffic summons or parking summons, sometimes the complainant has called the police to a particular scene and is unhappy with the service afforded them by the responding BPD members, and other times the complainant is unhappy with a particular policy or standard of the BPD.

In each of these circumstances involving an externally generated complaint, where it appears to be a PSD complaint, the investigation begins in basically the same manner as an internally generated complaint. After an initial contact with the complainant, often over the telephone, or through a letter written by the complainant, or a walk-in complainant, an

interview is scheduled and conducted by a PSD member. As indicated in Chapter 1 of this manual, the interviews can take place in many different places, although the PSD interview office is the location most frequently used for this purpose, as the equipment and resources sometimes used in the interview are at hand. Interviews are tape-recorded, with consent of the complainant, by PSD for future reference, and transcription, where appropriate. When there is no consent, the PSD member shall take notes of the interview for future reference and use.

The complainant is asked to provide as many of the relevant facts as possible. This includes the specifics about the incident, any corroborating evidence the complainant may have or be aware of, the arrest and booking reports, court papers, reports of medical injuries, witnesses' names and addresses, if available, and anything else the complainant or PSD feels may be important to the investigation of the complaint. While these evidentiary items are important to the investigation, they are not required to be provided in order for the investigation to move forward, to the extent the information available allows. Where the complainant is alleging injuries, the PSD member shall prepare a written description of the alleged injuries. If the injuries are still visible, those injuries shall be videotaped or photographed to preserve their evidentiary value. In instances where there is a claim that a complainant was subjected to the use of CAP spray where the BPD member may dispute the use of the spray, and where the complaint is filed within one week of the use of the spray, the PSD member shall make arrangements for the complainant to be placed under an ultra-violet light to detect dye, and shall document the result, including the location on the complainant's body and or clothing where dye was found to be present. Also, in these types of complaints, the PSD member will ask the complainant to bring the clothes they were wearing at the time of the CAP spray incident, where the clothes have not been washed since the incident, to be examined under the ultra-violet light.

Similar to internally generated complaints, in certain cases and circumstances, written requests, referred to as "buck slip requests", are sent to BPD members, sometimes as targets, sometimes as witnesses, and they are asked to provide a P-73 in response to specific questions posed to them by the PSD member. The supervisors or superiors of these members are often asked for a P-73, or for other documentary materials relating to the complaint. After receipt of these materials, and a review of the case by the PSD member and the PSD commanding officer, a decision is made on how the investigation will proceed. As is the case with internal complaints, in certain cases and circumstances, the PSD commanding officer, after consultation with the PSD investigating member, may direct the investigation proceed directly to questioning and sworn statements of targets and witnesses, without first requesting "buck slip requests", P-73's, etc.

Notification to Complainants

After the initial investigation is concluded, and it has been determined the investigation will move forward, a letter shall be sent to the complainant to notify them a PSD investigation has been initiated, the name of the assigned PSD member, and to inform the complainant of the process itself. This letter may also contain requests for

documentation, reports, medical releases, or other evidence, etc., that the complainants may have in their possession that may be helpful to the case, that are not readily available or easily obtained by PSD.

II. Organizing the Investigation

Developing a Guide or Plan

After the initial “preliminary” investigation, the PSD member shall prepare an outline, which acts as a guide, or plan, for how the investigation will proceed. Some of the issues considered in formulating the plan are:

❖ Allegations/Violations

- What are the specific allegations to be addressed?
- Are there violations of BPD rules or regulations, suggested by the facts on hand, even if not specifically identified by the complainant?
- Do the allegations have the potential for criminal charges?

❖ Evidence

- What evidence is currently available?
- What evidence may become available later?
- What evidence is missing or unavailable?
- Is it critical to the investigation?
- Are there photographs of the alleged injuries to the complainant, or the BPD member? If not, why?
- What documents are available?
- What documents are necessary?
- What is the order of calling witnesses and conducting interviews?
- What are the specific objectives of each interview?
- What questions will be asked?

Whenever practical, there should be a question list, both during the preliminary investigation, as well as during the interview process, to ensure all specific areas and questions are addressed. The question list is sometimes formulated so that different follow-up questions will be asked depending on the answers to previous questions. At a minimum, the objectives sought from each interview almost always address certain factors, including:

- The specific details of each allegation that has been made;
- Identifying each person involved and what role they had in the incident;
- Resolving inconsistencies, discrepancies, or conflicts with the physical evidence. Can the discrepancies be reconciled? If not, why?
- Uncovering underlying motives or reasons for the filing of the complaint, not being fully truthful, or a general reluctance to fully cooperate with the investigation;
- Clarifying any differences with prior statements or descriptions of their participation by other witnesses;
- How cooperative are the witnesses?
- Without each particular witness, how will the investigation be impacted? This may determine the order of witness interviews, considering witness availability, member vacation or sick leave, etc.
- What has been done to ensure that all witnesses have been identified and located?
- Has the complainant provided all known witnesses?
- Have police reports been reviewed to check for additional witnesses?
- Were there other BPD members present during the incident?
- Was the complainant arrested?
- Where others arrested with him or her? Are they witnesses?
- Were there any potential witnesses, including other arrestees and BPD members, present at these locations?
- Who should be interviewed and in what order?
- Other issues unique to the case at hand, and how they impact the investigation.

In many of the complaints, physical evidence is at a minimum, so witness information is an essential component of the PSD investigation.

Preparation of a Case Folder

A case folder is a valuable tool for the PSD member, as well as the PSD commanding officer. If the responsibility for a case needs to be assumed by a different PSD member, it should be able to be done so without undue duplication of effort. The commanding officer should be able to pull the case folder at any time and easily ascertain the status of the investigation, where all documents can be easily retrieved through the use of folder tabs, and what still needs to be done. The case folder acts as a case management tool as it helps to organize, document, and develop a strategy for managing the investigation. Other essential parts of the folder, in no particular order, are:

- *P-294, P-73, letter, or report* that outlines the initial complaint.
- *Case Control Sheet and Checklists*. These include what evidence has been gathered during the investigation, and evidence relevant to credibility determinations. They also act as a table of contents, and a guideline, for the materials contained in the case folder.
- *Investigative time line sheet, also referred to as a "to-do" sheet*. This sheet sets out the time line and what actions have been completed, and which still remain, concerning a particular case. This acts as a tickler these investigations are all time sensitive. They will also alert the PSD member when delays are anticipated. PSD shall track all open cases to assure that investigations are completed within 45 days of receipt of the complaint by PSD, unless the Commissioner grants documented extensions.
- *PSD member's case log* is a log of investigative activities with time spent on each. This allows for an easy review of the time spent on any individual case. It also offers support for an affirmative finding of due diligence in the investigation, should an issues of this nature arise. Sometimes, witnesses and complainants do not show for interviews, do not meet PSD members when meetings have been scheduled, and generally become difficult and uncooperative. This log helps to explain why some cases take longer than expected to investigate and ultimately, adjudicate.
- There are times where *a particular piece of evidence and/or related documents* do not fit into a folder. Under these circumstances, a notation should denote the location of any item not included in the folder.
- *The PSD disciplinary card* for the target member. Each BPD member has an individual disciplinary card that lists cases opened against a particular member, and the status of the case. It offers the PSD member a quick snapshot of a member's PSD history.
- *The target member's investigative history*.

- *Case Synopsis.* The PSD member prepares a one or two page overview of the case so that a quick thumbnail picture is readily available for review.

III. Evidence Use and Control

Common Problems in Evidence Collection

One of the most common problem areas in evidence collection in PSD cases is that the case, and consequently the available evidence, is somewhat “stale” even at the time when it is initiated. In highly publicized or celebrated cases, such as a high speed vehicle pursuit, with shots fired, vehicles damaged, and injured parties, etc., PSD is notified soon after the incident of its occurrence, sometimes within minutes, and the collection of important pieces of evidence is generally more easily accomplished. However, the bulk of PSD complaints are not as publicized, and the complaint does not make it to PSD until some time after its occurrence. This is especially true when the source of the complaint is notification that a “Notice of Claim” has been filed against the BPD and individual members. As in any criminal investigation, the evidence is less likely to be available as time passes, and it takes careful consideration and creativity by the PSD member to determine what might still be available, and how best to retrieve it.

Evidence Collection and Relevant Types of Evidence in PSD Cases

For the most part, evidence that may be relevant to any criminal investigation is relevant to the PSD investigation. Also, the same evidence collection and preservation techniques used in a criminal investigation are used in a PSD investigation. Some examples include:

- Photographs and videotape of the relevant locations, including police vehicles, police buildings, injuries to the BPD members and/or complainants, as appropriate;
- Medical records documenting the injuries for all injured parties;
- Computer aided dispatch reports, including dispatcher recordings and tapes;
- BPD reports made in relation to the incident, including manpower reports, “CARM” computer reports, payroll records, sick records, drug-raid plans, search warrants, etc.;
- Sketches and drawings made in relation to the incident;
- Firearms reports and test results;
- Court documents such as criminal court dispositions when appropriate, including orders of protection, divorce decrees, etc.;

- Telephone records;
- Surveillance and other covert evidence techniques used in a PSD investigation.

When appropriate, and in all cases involving the use of excessive force as defined herein, PSD will physically visit the location of the alleged incident, talk with neighbors, business persons in the area, and other disinterested parties to attempt to find witnesses or other evidence beneficial to the investigation. The important thing to remember is that evidence should be gathered as quickly as possible when it has been determined to be valuable to the investigation, and that it may take some creativity and planning to do as often the evidence is no longer readily available, and sometimes not available at all.

Chapter Three

The Adjudication Process

I. The Role of PSD in the Adjudication Process

Once the investigation phase has been completed, the PSD member assigned to a particular case makes the case file ready for review. He or she puts the reports and information gathered in a logical sequence and order, prepares the case synopsis, and submits the file to the commanding officer of PSD for review and consultation. The commanding officer of PSD reviews the file, primarily for completeness, and to minimize the need to have the case sent back for further investigation by the Commissioner or his staff because there are essential items missing or unaccounted for. The commanding officer of PSD will consult with the PSD member in charge of the file to address any concerns or questions he or she may have. The PSD staff, as a whole, meets to discuss all of the cases awaiting review by the Commissioner and his staff. This allows for an opportunity to check each other's work for completeness, and to offer comments and criticisms to better prepare the case files for review. A file review date, customarily once a month, or sooner if needed, is scheduled with the Commissioner and his staff to review all files ready for decision/action.

II. The Role of the Commissioner in the Adjudication Process

The PSD staff, the Commissioner, and certain members of his executive staff, at his or her direction, and also the BPD legal advisor, attend the PSD file review meeting. Customarily, each PSD member presents his or her own cases for review. The Commissioner and his staff are given the details of each case, ask detailed questions as appropriate, and get an understanding of the particulars of the case. Often the Commissioner and his staff have an understanding of the basics of the case prior to the file review as the PSD member, or the commanding officer of PSD, has briefed them about the case along the way. Sometimes the Commissioner sends the case back to PSD for further investigation or inquiry as they deem appropriate.

Once the Commissioner has determined the case file is sufficient for decision, and is satisfied concerning questions regarding a particular case file, he or she makes a decision on how the case will proceed. The Commissioner also makes credibility determinations of witness statements and reports, based on objective factors including, at a minimum, the target member's investigative history, the witness member's investigative history, and when relevant, the complainant and other witness criminal history, and other credible facts suggesting a propensity for the truthfulness, or untruthfulness, as the case may be, of persons involved, or of the complaint in general. After the review of each particular case, including the credibility determinations and other factors as appropriate, the Commissioner decides outcomes and makes findings regarding the case file, based on the "preponderance of the evidence" standard. The Commissioner then directs the PSD member in charge of a particular case file on how to proceed. In all cases alleging the use of excessive force that

result in a finding other than "Sustained", a copy of the final disposition and reasons for it, including all credibility determinations, shall be placed in the PSD case file.

III. Complaint Findings and Classifications

The following findings are used for classifying the disposition of each case:

Sustained. The investigation has produced a preponderance of the evidence to prove the allegation of an act that which has been determined to be misconduct, as defined herein.

Not Sustained. The investigation has failed to produce a preponderance of the evidence, to either prove or disprove the allegation.

Unfounded. The alleged act did not, in fact, occur.

Exonerated. The allegation in fact did occur, but the actions of the BPD member were legal, justified, proper and in conformance with the law and BPD policies and procedures.

Other With Explanation. These may include situations where the BPD member has left the BPD, retired, or died prior to the file review. There are also times when the Commissioner has determined that although the preponderance of evidence standard has not been met to prove the allegation of an act that was determined to be misconduct, there nevertheless exists some credible evidence of inappropriate actions by BPD members. A valuable tool in these instances is for the Commissioner to impose some non-disciplinary corrective actions, such as remedial training, or non-disciplinary conferences to discuss the actions of the BPD member in more detail, with a goal of correcting and improving member behaviors. These types of conferences are conducted in accordance with existing rules and regulations of the department, as well as in conformity with the existing collective bargaining agreements.

IV. Departmental Charges

Procedures After Sustained Findings

When the Commissioner has determined the complaint to be "Sustained," he or she may direct, in his or her discretion, that Departmental charges be preferred against the accused member.

If the Commissioner determines that Departmental charges are not to be preferred, he or she shall direct when and what types of appropriate non-disciplinary actions be taken to insure that the member's conduct is corrected and that the likelihood of recurrence is minimized. Such actions must be in accordance with the rules and regulations of the department, and in conformity with the existing collective bargaining agreements.

If the Commissioner determines that Departmental charges are to be preferred, and those charges subsequently result in a guilty finding, whether by plea or decision after

hearing, he or she shall determine the appropriate penalty to be assessed, and also what non-disciplinary actions be taken to insure that the member's conduct is corrected and that the likelihood of recurrence is minimized, in accordance with the rules and regulations of the department, and in conformity with the existing collective bargaining agreements.

Charges and Specifications Defined

The "charge" is defined as the designation of the specific standard of conduct which the accused member is alleged to have violated. The "specification" is defined as a statement of facts, which support the offense charged. Specifications should be drawn in clear and concise language and should contain the following information:

- Rank, name and command of the accused member;
- Date, time and place of the alleged offense (approximate times acceptable);
- Generally, if the offense was committed more than once, or in more than one way, there shall be distinct specifications for all;
- Specifications under each charge shall be numbered consecutively.

Preparing and Serving Departmental Charges

Charges are usually prepared and drawn by the PSD member in charge of the case, are signed by the commanding officer of PSD as the complainant on behalf of the BPD, and are approved and signed by the Commissioner.

The PSD member in charge of the case shall also prepare a "Notice of Charges" which shall be attached to the charges. PSD shall issue or cause to be issued to the accused member, a copy of the charges and "Notice of Charges." If the charges are issued in person to the accused member, the member shall acknowledge receiving the charges by signing his or her name and the date thereon. If the charges are not issued in person to the accused member, the officer delivering the charges shall certify in writing on the original copy, the time, date, place and manner in which the charges were delivered. If the charges cannot be personally issued to the accused member, charges may be issued by:

Delivering the charges personally to some person of suitable age and discretion at the accused member's place of residence; or

If the place of residence cannot be located, then by personally posting the charges in a conspicuous place in the stationhouse or office to which the accused member is assigned.

In all cases, the member's collective bargaining agent must also be served with the charges.

V. Suspensions From Duty

Suspensions Prior to Disciplinary Hearings

Whenever there is an allegation of misconduct against a BPD member, it is the policy of the BPD to suspend that member from duty prior to a disciplinary hearing, consistent with existing collective bargaining agreements, when in the judgment of the Commissioner the member's continued presence on the job will disrupt the operations of the unit to which he or she is assigned; or it will have an adverse impact on the BPD; or the alleged violation is of a serious nature.

Suspensions Prior to Service of Charges; Generally

All officers of the rank of lieutenant and above are authorized to immediately suspend a subordinate member for violations of Department standards of conduct which are deemed to be of a serious nature, including appearing for duty under the influence of alcohol. Such suspensions shall generally be with pay pending service of Departmental charges.

Consistent with the Department Drug Testing policy, sworn members appearing for duty under circumstances in which there exists reasonable cause to believe that they are under the influence of drugs shall be directed to submit to a "reasonable cause" drug test. They shall be relieved from duty and placed on administrative leave of absence with pay pending receipt of test results and the completion of any investigation conducted by the City. Refer to the Buffalo Police Department Drug Testing Policy.

Suspension With Pay Prior to Service of Charges - Sworn Members

Supervisors or superior officers contemplating suspending a member prior to service of charges shall, absent exigent circumstances, first consult with PSD. If a sworn member of the Department is to be suspended prior to service of charges, the superior officer that suspends the sworn member shall:

- Inform the sworn member that he or she is suspended and the reason therefore;
- Obtain the sworn member's badge and identification card;
- If possible, ascertain if the sworn member has a valid pistol permit;
- If no permit is presented, obtain all handguns owned by the sworn member,
- If a valid permit is presented, obtain all Department issued weapons only;
- Prepare forms P10 and/or P-10a for the officer's weapons, badge and identification and deliver the property to the Property Office or the Shift Officer, consistent with

current directives;

- Notify PSD if PSD personnel are on duty, or notify the Shift Officer when no PSD personnel are working and in such case the Shift Officer will notify the on-call PSD member;
- A memorandum detailing the conduct or activities for which the member was suspended. Copies of the memorandum must be forwarded to PSD prior to the expiration of the suspending officer's tour of duty. A copy shall also be forwarded through the normal chain of command

Suspension With Pay Prior to Service of Charges - Civilian Members

If a civilian member is immediately suspended with pay prior to service of charges, the superior officer making the suspension shall inform the employee that he or she is suspended and the reason therefore.

Suspension Without Pay After Service of Charges; Generally

Members who are to be suspended without pay after service of charges shall first be served with the charges. The member shall be allowed to review them and cite any inaccuracies to PSD before the suspension occurs. After service of Departmental charges, a member may be suspended without pay for a period not to exceed thirty calendar days. Such suspension shall be at the direction of the Commissioner.

Members represented by Local 264 may be suspended without pay after service of charges only if their continued presence on the job would represent a potential danger to persons or property or would severely interfere with operations.

All other members of the Department may be suspended without pay after service of charges if their continued presence on the job would have an adverse impact on the Department.

Return of Benefits if Charges are Not Sustained

If the charges are not sustained, the accused member shall be restored to his or her position in accordance with the current directives, rules, and regulations of the BPD, and the current collective bargaining agreement involving the BPD and the member.

VI. Procedures after Service of Charges

Answer to Departmental Charges

The accused member shall have ten (10) days, exclusive of the date of service, in which to answer the charges.

The answer must be in writing and must be served on the Commissioner.

Failure to serve a written answer within the time provided shall be deemed an admission of the charges. However, where the accused defaults in answering, he or she shall be permitted to show matters in mitigation of any punishment that may be imposed.

Amendments to Departmental Charges

After charges have been preferred, they may be altered or amended by the Commissioner, or he or she may have new charges prepared.

All causes for complaints against the accused employee arising from the same incident and not covered by the original or amended charges shall be forever barred.

Informal Conferences

Within ten (10) days after the receipt of the written answer to the charges preferred, or if the accused member defaults in answering, within ten (10) days after his or her time to answer has expired, the Commissioner shall conduct an informal conference upon the charges. At such a conference, the accused member shall have the opportunity to be represented by his or her collective bargaining agent or by legal counsel. He or she may, if desired, present witnesses on his or her behalf. The Commissioner shall have the power to dismiss or withdraw the charges if the information developed during the conference so warrants, or accept a plea of guilty.

In all cases where the accused member enters a plea of guilty, the Commissioner shall receive evidence showing all the circumstances of mitigation or aggravation that accompanied the offense, unless they are fully disclosed in the specifications. The Commissioner shall also consider the severity of the offense, the impact on the department and the complainant, and other relevant facts in determining the amount of discipline sought to be imposed. The Commissioner shall also consider the members' prior record of ultimately sustained complaints and any information contained in those files as well as the immediate sustained allegation, to the extent permitted by the applicable collective bargaining agreement. The Commissioner shall direct that the disciplinary penalty to be imposed be carried out by the Department as soon as practical after the final disposition, whether by way of plea or decision after hearing.

In the event that the charges are not withdrawn or dismissed after the informal conference or if a plea of guilty has not been entered, a formal hearing shall then be held upon the charges before a hearing officer to be mutually selected by Department and the Union (the parties). Such hearing officer shall be deemed to be the person designated by the Commissioner for that purpose within the meaning Section 75 of the Civil Service Law of the State of New York. In the case of a sworn member, where the parties are unable to agree upon a hearing officer, or, where the hearing officer agreed upon is or becomes unable or unwilling to act, then the parties shall mutually apply to the Supreme Court of the State of New York for the appointment of a hearing officer.

Uniforms to be Worn

Uniformed members of the Department shall appear at the Informal Conference and the Formal Hearing in uniform.

Members assigned to detective or plainclothes duty, and non-uniform civilian members, need not appear in uniform at the Informal Conference and the Formal Hearing.

VII. Disciplinary Hearings

Rights of the Accused Member

The accused member is entitled to the following, as a matter of right:

- A reasonable time in which to prepare for hearing;
- To be present at the hearing;
- To be heard in person and by counsel and to give and furnish evidence in his or her defense;
- To a hearing open to the public as appropriate;
- To reasonable adjournments in order to be able to prepare for hearing;
- He or she shall not be compelled in advance of the hearing to disclose the names of any of his or her proposed witnesses except for the purposes of an adjournment based on the unavailability of a material witness;
- Upon application, the Commissioner shall issue blank subpoenas in which the accused or his or her attorney may insert the name of any person he or she desires to attend and give evidence.
- The burden of proving the charges shall rest with the Department by a preponderance of the evidence standard.

Subpoenas

The Commissioner shall have the power to administer oaths and issue subpoenas. In case any witness shall refuse to appear or answer any proper question, he or she may be ordered to do so by a justice of any court of record, and punished for his or her disobedience of any such order in accordance with law.

The impartial hearing officer selected to conduct the formal hearing shall be vested with all the powers of the Commissioner in conducting the hearing.

Adjournments Due to the Absence of a Witness for the Accused

Upon application by the accused for adjournment of a formal hearing because of the absence of a witness for the accused, the application should specifically include;

- The name of the witness;
- The witness is material, and why;
- The accused member has used due diligence to secure the attendance of the witness;

Recording the Formal Hearing

All formal hearings must be recorded.

If the accused member is found guilty, a copy of the charges, his or her written answer, a transcript of the hearing, and the final determination itself shall be placed in the member's personnel file. A copy thereof shall also be filed with the Commissioner of Human Resources by the Commissioner.

A copy of the transcript of the hearing shall, upon the request of an accused member who has been found guilty, be furnished without charge to the member.

The PSD case file shall also contain the name of the member, the discipline determined, the dates the discipline was imposed, any PSD file numbers or cross-references, and any reasons listed for the particular discipline penalty imposed.

Rules of Evidence

Compliance with the technical rules of evidence during a formal disciplinary hearing is not required. The Hearing Officer shall determine what evidence will be allowed during presentations made during the case.

Review of the Hearing Officer's Decision

After the formal hearing, the impartial hearing officer shall make findings and recommendations that shall be referred to the Commissioner for review and decision. He or she shall also consider that the amount of discipline sought to be imposed shall in part be determined by considering a member's prior record of ultimately sustained complaints and any information contained in those files as well as the immediate sustained allegation, to the extent permitted by the applicable collective bargaining agreements. The judgment of the Commissioner will be set forth as an order and will become part of the record of the case.

If the PBA disagrees with any decision by the Commissioner of Police to change the decision recommended by the Hearing Officer concerning a member of the Department, the PBA may seek review of such change in decision in accordance with procedures set forth in the current collective bargaining agreement

Any member believing himself or herself aggrieved by a penalty or punishment of demotion in or dismissal from the service, or suspension without pay, or a fine imposed pursuant to the provisions of the collective bargaining agreement, may appeal from such determination in accordance with the provisions of the New York State Civil Practice Laws and Rules.

Termination Conferences

If a member's dismissal results from disciplinary action or for violation of the Department's Drug Testing Policy, a termination conference shall be held when feasible. At this conference the member facing dismissal shall be:

- Informed of the reason for the dismissal;
- Informed of the effective date of the dismissal;
- Informed of the status of fringe benefits and retirement benefits;
- Informed of the contents of his or her personnel file as it relates to the cause of dismissal and
- Required to return all Department property and equipment.

Seeking Intercession for the Accused

Members against whom charges have been preferred, shall not in any manner, or at any time, cause any person to intercede for them, personally or otherwise.

Affect of a Finding of Guilty Limited to Two Years

After a lapse of two (2) years, a determination that an accused member was guilty of the charges preferred against him or her shall not be considered upon application for promotion made by him or her, nor shall it affect any right or privilege to which he or she would otherwise be entitled were it not for such determination. A lapse of two years shall be deemed to have occurred two years from the date that the Department accepts a plea of guilty to the charges, or two years after the Commissioner receives the findings and recommendations of the hearing officer, whichever is later.

Resignations and Separations for Cause

The Commissioner shall direct that all facts pertinent to a case be placed in the personnel file of any member resigning or separating from the Department for cause.

Effective Date

This manual is effective January 15, 2004. It shall be revised and updated as deemed necessary by the Commissioner of Police.